DOCUMENT RESUME

ED 196 358 HE 013 363

AUTHOR Mortimer, Kenneth P.
TITLE Academic Collective Bargaining.
INSTITUTION Association of Governing Boards of Universities and Colleges, Washington, D.C.
SPONS AGENCY Lilly Endowment, Inc., Indianapolis, Ind.
PUB DATE 77
NOTE 7p.: For related documents, see HE 013 359-365, ED 159 944, ED 168 394, ED 184 435.
AVAILABLE FROM Association of Governing Boards of Universities and Colleges, One Dupont Circle, Suite 720, Washington, DC 20036 (Members $1.25, 10 or more $1.00; nonmembers $2.00, 10 or more $1.50)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Collective Bargaining: College Administration: *College Faculty: *Contracts: Employment Practices: Faculty College Relationship: Faculty Workload: Fringe Benefits: Governance: *Governing Boards: Grievance Procedures: Higher Education: Negotiation Agreements: *Personnel Policy: Teacher Salaries: Trustees: *Unions

ABSTRACT

Issues concerning collective bargaining by college faculties, the bargaining team, and the board's role in bargaining are considered. Reasons why faculties want to bargain and principles that are pertinent to the transfer of the industrial model to the campus scene are examined. It is suggested that the board is the employer for private institutions, but in the public sector there can be other bodies that serve as employer. Various ways a board may try to discourage faculty unionization and actions that a board or individual trustee may not take are noted. Generally, the board's legal role is limited to ratification of the contract. Five main categories of issues that may be included in faculty bargaining contracts are as follows: salaries and fringe benefits, grievance procedures, faculty personnel policies and workloads, union rights and privileges, and governance. Three models of collective bargaining that have been suggested are: limited bargaining or employment negotiations, structural bargaining which includes governance issues from a procedural standpoint, and comprehensive bargaining which does not place limits on bargaining issues. Contract administration and protection of managerial rights of the board are addressed. (SW)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED196358

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

AGB

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

HE 013 363

HE 013 363

Kenneth P. Mortimer

Kenneth P. Mortimer is professor of higher education and director of the Center for the Study of Higher Education at The Pennsylvania State University. Dr. Mortimer is author or co-author of more than 60 publications and papers in the field of higher education, and spoke on the subject of academic collective bargaining at AGB's 1976 Fall Workshop in St. Louis.

©1977, Association of Governing Boards of Universities and Colleges. Printed in the United States of America.

This publication was produced with funds provided by a grant from the Lilly Endowment.

Academic Collective Bargaining

Collective bargaining by college faculties is a phenomenon not much more than a decade old. Today, about 550 campuses have faculty bargaining, with the total number of faculty involved, some 100,000, representing 15% or more of the nation's total. By far the greater proportion are in the public sector, especially in the community colleges and the regional universities, most of which do not have long-standing traditions of strong faculty participation in governance.

Nevertheless, the growth of state laws sanctioning bargaining by public employees has opened the door in more than 20 states to faculty unionization in public institutions, while the National Labor Relations Board's assumption of jurisdiction in the private sector provides a mechanism for bargaining in the private institutions.

Why do faculties want to bargain?

A much cited reason is the leveling off of peak enrollments resulting in the so-called "steady state" in higher education with a tightened faculty job market and pressure to keep costs down. Apart from this general trend, there are numerous specific reasons on individual campuses—reaction against an administration perceived as arbitrary or authoritarian, capricious actions by governing board or administration, active organizing efforts by one of the national faculty unions (American Federation of Teachers, National Education Association, American Association of University Professors).

Basic characteristics of bargaining

In the industrial sector, where most bargaining experience has accumulated, five principles have characterized it:

1. An assumption of fundamental conflict of interest between employer and employees.

2. The principle of exclusivity, that is, only one bargaining agent to represent the employees.

3. The formal bargaining of a contract which is legally binding on both parties.

4. Establishment of grievance procedures ending in binding arbitration.

5. The threat of sanctions (strike or lockout) to enforce impasse resolution.

The first of these principles, the assumption of conflict of interest, runs contrary to the traditional concept of the college or university as a community of scholars, in which faculty dominate academic policy and have major influence on issues related to organizational structure, while wages, hours and conditions of employment are subject to individual negotiations. Nevertheless, the assumption that the traditional arrangement alone is consistent with the concept of a community of scholars remains unproven.

Three other observations are especially pertinent to the transfer of the industrial bargaining model to the campus scene. First, conflict of interest may arise in another sense, for example if faculty members sit on the board of trustees. Second, the principle of exclusivity frequently involves a serious question about the role of the faculty senate. Third, the establishment of grievance machinery under a bargaining contract infringes on one of the traditional functions of governing boards, that of acting as court of last resort.

Is the board the employer?

This key question can be answered in the affirmative with respect to private colleges and universities, but in the public sector the picture is distinctly confused. Some states (New York, New Jersey) have created an Of-

fice of Employee Relations which becomes the employer of record for the state university or the state college system. In Pennsylvania the executive branch of the state government serves as employer for the State College and University System.

Other states (Michigan, Ohio, Delaware) have no such central state apparatus and consequently their institutional boards retain the role of employer. Between these two extremes lie many other permutations.

Where the legal-constitutional situation is in doubt, the board should probably seek to have itself designated as the employer.

The board's role in bargaining

The board has crucial roles to play before, during and after faculty unionization and bargaining.

When a union first appears on a campus, and a board deems it wise, it may do a number of things to encourage a negative response on the part of the faculty. It may communicate its reasons, orally or in writing, for believing that collective bargaining is not in the best interests of the faculty and the institution. It may cite the dues and fees required for union membership, rebut inaccurate or misleading union communications, circulate or post *unsolicited* statements from individual faculty members opposing the union and remind employees that benefits promised by the union must be negotiated.

But a board or individual trustee may not promise pay increases or other favors for not joining a union, threaten job losses or loss of privileges, spy on union meetings, discriminate against employees supporting the union, state that they will not deal with a union even after an election, or give direct or indirect financial support to a favored union.

The board should keep in mind that a too aggressive resistance to a faculty unionization drive may harm future board-faculty relations more than the collective bargaining process.

A key question is the scope of bargainable items. Governing boards should have a legal opinion as to what is the mandatory scope of bargaining under existing state law. Issues not mandated by law may or may not be included in bargaining; whether they are is itself a primary subject of negotiation. Five main categories of issues turn up in typical faculty bargaining contracts:

- Salaries and fringe benefits
- Grievance procedures
- Faculty personnel policies and workloads
- Union rights and privileges
- Governance

Except for the first category, none of these appears in every contract. Only about a quarter of existing contracts have a clause on governance calling for a joint faculty-administration committee to supplement existing senate, faculty council or other bodies. Two-thirds to three-quarters of all contracts have "management rights" clauses reserving to board and administration all rights not specifically limited by the contract.

No governing board should approach the bargaining process without having a well-developed philosophy as to its objectives, which can be communicated clearly to the bargaining team. Relevant to the development of a philosophy is the classification by Neil Bucklew in "Collective Bargaining: Three Campus Models" (*AGB Reports*, January/February 1975): *limited bargaining*, or "employment negotiations," in which the scope of bargaining is restricted to terms and conditions of employment; *structural bargaining*, in which governance issues are also taken up, but only in procedural terms, that is, a timetable for tenure decisions but not criteria for tenure; and *comprehensive bargaining*, in which the negotiating session does not attempt to place limits on bargainable issues. Under the comprehensive formula existing governance mechanisms can be written into the contract and relevant decision-making procedures specified.

Beyond the basic bargaining policy,

the board should lay down sufficiently specific guidelines for financial and other terms so that the bargaining team can evaluate proposals and have the flexibility to respond adequately.

The bargaining team

The law in Hawaii requires two members of the board of regents to be included on the bargaining team of the University of Hawaii, and in Massachusetts state law mandates indirect participation by boards. Generally, however, the board's legal role is limited to ratification of the contract.

The argument against putting a board member on the bargaining team, as stated by George Potter ("Collective Bargaining: A Primer for College Trustees," *AGB Reports*, September/October 1975) is that it "brings too much power to the bargaining table." A concession made by a board member is difficult for the full board to retract. The bargaining team is tactically better off if it can make every agreement subject to board approval.

Potter also believes that the president should be left off the negotiating team because such participation may hamper his or her subsequent responsibility for administering the contract.

Potter recommends instead as chief negotiator a member of the administration experienced in negotiations, or, if there is none, a professional from outside, with one or more staff members to assist. He also recommends a "backup team" consisting of the president, board chairman and appropriate senior staff to advise and direct the front-line negotiators.

Administration of the contract

Once the contract has been negotiated, "living with it" becomes a matter requiring some sophistication. Administrations and boards have too often failed to prepare themselves in appropriate techniques.

One fundamental principle is that the union is certain to attempt to achieve gains in the administration of the contract that it was unable to achieve at the bargaining table. The best defense against such "guerilla warfare" is for the board to make certain that the various features of the contract are thoroughly understood by all management personnel concerned in the execution—staff, deans, department heads, etc. It may be advisable to provide some administrators with training in contract management techniques via consultants or workshops.

A final word

To sum up, boards do not need to give up inherent managerial rights at the bargaining table. A well-developed bargaining philosophy, a carefully weighed position on the issues, advance consideration of scope of bargaining, can preserve fundamental board rights.

If this is done, the end result of the process may be, as E. D. Duryea and John C. Neddy have suggested *(Collective Bargaining: Impact on Governance)* an easing of suspicions and an enhancement of confidence between the parties.

The references on collective bargaining mentioned in this article may be ordered from AGB. *Collective Bargaining: Impact on Governance,* by E.D. Duryea and John C. Neddy, a study of collective bargaining at six institutions representing the spectrum of higher education, is available for $2.50 each for members ($1.50 each for 10 or more) and $5.00 each for nonmembers ($3.00 each bulk). Articles from *AGB Reports* are $2.50 each ($1.50 each bulk) for members; $3.50 each ($2.25 each bulk) for nonmembers.

Other information on academic collective bargaining is available in other AGB publications and through the Trustee Information Clearinghouse.